

**Before the
Federal Communications Commission**

In the Matter of)	
)	GN Docket Nos. 09-47,
National Broadband Plan)	09-51 & 09-137
)	

COMMENTS – NBP PUBLIC NOTICE NO. 26

The Communications Finance Association (“CFA”), by its counsel and in response to National Broadband Plan Public Notice No. 26 (“PN-26”),¹ hereby submits limited comments regarding the use of spectrum presently allocated and licensed for broadcast television. For its limited comments, CFA states as follows:

Background

CFA is a voluntary organization whose membership extends to providers of capital and financial services to companies operating in, or seeking to enter, both the media and telecommunications sectors of the communications industry. CFA’s mission is to recognize and address, in appropriate forums, the various business and regulatory issues affecting the communications industry’s access to capital, both debt and equity. CFA’s members and their affiliates are, and have been, involved in the financing of the construction, acquisition and operation of numerous broadcast television stations licensed by the Federal Communications Commission (“Commission”).

¹ DA 09-2518, released December 2, 2009.

Comments

Any prudent person or institution considering the provision of equity or debt financing to a television broadcast station must first conduct a risk or credit analysis of the station. A critical element of such analysis will be an evaluation of the stability of the station's most important asset, its spectrum license.

While it always has maintained that a licensee has no property right in the spectrum underlying its license, the Commission also has sought to assure broadcast investors and lenders as to television broadcasters' long-term access to spectrum sufficient to maintain viable operations and coverage. For example, the Commission has provided broadcast licensees with a "reasonable renewal expectation", and has modified license renewal procedures so as to prohibit the filing of new station applications seeking to compete with renewal applicants on a "comparative" basis. And, when adopting rules for the transition from analog to digital television technology, the Commission was careful to adopt technical standards that would at least maintain, if not improve, each station's coverage.

PN-26, however, now raises substantial questions as to whether the financial services industry can reasonably rely on the long-term availability of that all-important asset, the broadcast television license. And, any concern as to long-term license availability also will adversely impact any assessment of the short-term value of a broadcast television enterprise.²

² The Commission also should recognize that any perceived willingness on its part to significantly impair licenses for broadcast television, a long-time major component of the communications industry, will undermine the financial services industry's general confidence in the historical stability of all licenses issued by the Commission.

Spectrum Assessment

CFA notes that virtually all business plans presented by television broadcasters now specify an allocation of digital capacity to, and revenue streams from, various uses other than a station's principal programming signal. In every such business plan, the anticipated revenue from such ancillary uses is presented as being very important to the overall financial viability of the station. Accordingly, the non-primary uses of licensed broadcast television spectrum should not be viewed as extraneous, non-essential uses of allocated spectrum, but as critical elements of a station's ability to support its basic operations serving the public interest.

Spectrum Availability and Efficiency

When considering the efficiency of the current broadcast television spectrum allocations, the Commission also should give serious consideration to the impact that any reconfiguring of such allocations may have on other users of that spectrum. For example, the availability of television "white space" is relied upon for the operation of a substantial number of "unlicensed" devices. Any displacement of such operations would (a) need to be accommodated in other spectrum bands, and (b) would require a collective expenditure of enormous proportions by users of unlicensed devices rendered obsolete by the loss of the presently allocated spectrum.

Broadcasting and the Public Interest

As recognized by PN-26, free over-the-air television broadcasting long has served many public interest objectives. Further, the Commission traditionally has


insisted that broadcast television stations utilize their unique capabilities to provide “localism” in their program offerings, and has provided corresponding mechanisms to assure that such local programming is available throughout each station’s coverage area (e.g., MVRD “must-carry” rules). It is no accident that television broadcast stations presently are (a) the primary source of information on local crises (e.g., storms and accidents) and other “breaking” local news events; (b) the major forums for the discussion of issues of local importance; and (c) the principal outlets for political and advocacy advertising. Accordingly, the Commission should do nothing to diminish the signal coverage and public service capabilities of over-the-air broadcast television stations.

Conclusion

In recognition of each station’s value to its service area, and in reliance on a perceived stability in the controlling regulatory scheme, substantial amounts of capital have been provided to the television broadcast industry. Any major regulatory change adversely affecting perceived values would be unfair to the existing providers of capital, and would chill, if not terminate further investment.

Respectfully submitted,

COMMUNICATIONS FINANCE ASSOCIATION

By: 
A. Thomas Carroccio
A. Thomas Carroccio PLLC
1140 Nineteenth Street, N.W., Suite 600
Washington, D. C. 20036
202.296.8870
Tom.Carroccio@CarroccioLaw.com

Counsel for
Communications Finance Association